

**Before the National Labor Relations Board  
Region 21**

International Union, Security, Police &  
Fire Professionals of America (SPFPA) and its Local

3, Intervenors

-and-

Paragon Systems

**Case No. 21-RC-262136**

Employer

-and-

Law Enforcement Officers Security

Unions LEOSU-CA, LEOS-PBA

Petitioner

**Intervenor's Request for Review**

The International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local 3 (Intervenor, collectively) files this Request for Review by its underlisted attorneys of the Regional Director's Denial of the Intervenor's Motion to Dismiss (Denial) and his subsequent Decision & Direction of Election (DD&E.)

Both the Denial and DD&E raise a substantial question of law or policy because there is an absence of reported Board precedent relating to the issues incorrectly decided by the Denial and DD&E. The issues are whether the instant petition was procedurally deficient because it has had two (2) case numbers, whether withdrawal of the petition for the same matter was improperly approved, and whether the Denial improperly punishes the Intervenor for raising a meritorious contract bar argument.

The Board's ruling on the Request for Review will affect the validity of all ballots to be cast in this matter. The Intervenor requests that all ballots be impounded and remain unopened pending the Board's ruling and/or decision on this Request for Review.

The Intervenor also requests that the Board stay all the Region's proceedings in this case, including the election. This is clearly necessary under the particular circumstances of this case. This is because the DD & E and Denial incorrectly decided matters inconsistent with longstanding Board policies central and indispensable to efficiently administering Board elections.

### ***Facts***

On June 25, 2020,<sup>1</sup> the Petitioner filed the instant petition. The unit description is as follows.

#### **Employees Included**

All full time and regular part time, armed and unarmed security officers employed by the Company, performing guard duties as defined by Section 9(b)(3) of the National Labor Relations Act pursuant to contract HSCEW9-08-Q-00006 contract covering the same facilities and services, between the Company and the United States Department of Homeland Security (DHS) for the provision of security services at certain federal facilities in the Los Angeles, Orange County and surrounding areas

#### **Employees Excluded**

Office clerical, managerial personnel, confidential personnel, supervisors as defined by the National Labor Relations Act, [sic]

Attachment A (Pre-election Hearing Bd. Ex 1, pg. 43)

When the petition was filed on June 25, the Petitioner left pending an earlier, identical petition filed on June 11 (Case No. 21-RC-261540.) That petition was functionally identical<sup>2</sup> in all

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<sup>1</sup> All dates in 2020, unless otherwise indicated.

<sup>2</sup> The *only* difference between the unit descriptions in the two (2) petitions is that the later, instant petition includes the term "Orange County." Administrative notice must be taken that Orange County is an area surrounding Los Angeles County. Therefore, the petitions were functionally

respects to the instant petition and had the below unit description.

#### Employees Included

All full time and regular part time, armed and unarmed security officers employed by the Company, performing guard duties as defined by Section 9(b)(3) of the National Labor Relations Act pursuant to contract HSCEW9-08-Q-00006 contract covering the same facilities and services, between the Company and the United States Department of Homeland Security (DHS) for the provision of security services at certain federal facilities in the Los Angeles and surrounding areas [sic]

#### Employees Excluded

Office clerical, managerial personnel, confidential personnel, supervisors as defined by the National Labor Relations Act, [sic]

Attachment A (Pre-election Hearing Bd. Ex 1, pg. 21)

This later, instant petition was filed, docketed and the Region began processing it before the Petitioner had requested withdrawal of the earlier petition in 21-RC-261540 and before such withdrawal had been approved by the Regional Director.<sup>3</sup>

Petitioner admitted as much in an email dated June 24, where it wrote to an Employer representative, Les Kaciban, to the Intervenors' International President, David Hickey, and to the Board agent handling this case:

We have refiled a new petition for the Los Angeles unit. Once it is docketed we will be withdrawing our petition in Case No 21-RC-261540.

Attachment A (Pre-election Hearing Bd. Ex 1, pg. 9)

On July 7, the Intervenor filed a position statement, and a Motion to Dismiss. Attachment

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identical.

<sup>3</sup> In his later Denial of the Intervenor's Motion to Dismiss *infra*, the Regional Director found that that withdrawal of the earlier petition was in response to a contract bar argument that had been raised by the Intervenor earlier.

A (Pre-election Hearing Bd. Ex 1, pgs. 7-8) As more fully explained in the Discussion section, *infra*, the Motion argued that, per longstanding Board policy, the petition was procedurally defective because, owing to the Petitioner's improper delay requesting withdrawal of the earlier petition, the same case had two case numbers.

On July 9, the Regional Director incorrectly denied the Motion to dismiss, finding that:

[T]he mere fact that two petitions were pending for an allegedly identical matter for approximately 1 day is not grounds to dismiss the petition. In this case, it is undisputed that the petition in Case 21-RC-261540 is no longer pending and was withdrawn on June 25, 2020, just 1 day after the instant petition was filed.

Moreover, the two petitions were in fact assigned unique case numbers, Cases 21-RC-261540 and 21-RC-262136, and any clerical error was corrected by issuance to the Intervenor of a corrected docketing letter with the petition in this matter on June 25, 2020.

Finally, it is important to note that the Petitioner requested to withdraw its petition in Case 21-RC-261540 based in part on the Intervenor's position that the petition in that case was filed before the opening of the window period under the Board's contract-bar doctrine.

Instead of litigating the issue of whether the petition in Case 21-RC-261540 was or was not filed before the window period opened, the Petitioner elected to withdraw that petition and file this petition (21-RC-262136) within the window period. While the Intervenor argued that the petition in Case 21-RC-261540 was untimely, it raises no such argument in this case.

Attachment A (Pre-election Hearing Bd. Ex 1, pgs. 4-6)

On July 15, a pre-election hearing was held where the parties stipulated to the above-described facts. Attachment B (Hearing Transcript). After the hearing, the Intervenor submitted a brief, where it reiterated its position in its Motion concerning the two (2) different case numbers.

As more fully explained in the Discussion section, *infra*, the Intervenor also argued that

the Regional Director's approval of the withdrawal request in the earlier case was improper, that the approval would permit petitioners to end run around longstanding Board rules requiring prejudice to attach to withdrawing a petition after a pre-election, and that the Denial punished the Intervenor for raising a meritorious contract bar argument in Case No. 21-RC-261540.

On July 31, the Regional Director incorrectly issued a Decision and Direction of Election ordering that an election be held. Attachment C (DD &E.)

### ***Discussion***

The Board must grant review of the Regional Director's incorrect Denial and his incorrect DD & E. Both raise substantial questions of law and/or policy because there is an absence of reported Board precedent relating to the issues raised therein.

By not requesting withdrawal of the earlier petition before filing another petition identical to it, the instant petition is inconsistent with Section 11110 of the Casehandling Manual, which states in relevant part:

Should the petitioner's withdrawal request be accompanied by other action with which it is inconsistent, for example, should there be a strike or picketing for recognition by a union-petitioner, the withdrawal request should be denied, and the petition should be processed.

What could be more inconsistent with a withdrawal request by the Petitioner than stating not only to the Region, but also to the Employer and the Intervenor in this matter, that the Petitioner intended to request withdrawal only after the refiled petition for the same unit was docketed?

The earlier petition should not have been permitted to have been withdrawn, meaning that the instant petition is procedurally deficient. *See also* HOW TO TAKE A CASE BEFORE THE NLRB, Ch. 8.III.A.1, pg. 8-41-41 (9th ed.) (A petitioner's genuine desire [to withdraw] usually is

honored ... if, however, the withdrawal request is accompanied by conduct indicative of an ongoing interest in representing the employees ... then the withdrawal request will be denied[.]”)(emphasis added)

In addition, Section 11111 of the Casehandling Manual states:

Where a request [to withdraw] is received prior to close of a hearing or before the approval of an election agreement, the request should be granted without prejudice to the subsequent filing of a new petition by the petitioner.

That Section contemplates filing a subsequent petition after an earlier petition, not of a petition whose filing precedes the withdrawal request. The Petitioner did not refile a petition after the withdrawal was granted. Therefore, dismissal of the instant petition is required.

There are grave practical implications to a contrary conclusion. Such a conclusion would let this very same Petitioner, now that the pre-election hearing has closed, refile a third petition, wait a day until it was docketed, and then to request withdrawal of the instant petition.

The upshot would be that the Petitioner will have end run around the prejudice that is supposed to attach when withdrawal is requested after a hearing. Indeed, what is to prevent the Petitioner from continuing to proceed in the same fashion to file a fourth or a fifth petition even if withdrawals are subject to prejudice to filing of new petitions?

This is why the Denial mistakenly relied on the observation that two (2) petitions were pending for the same matter for only one day. The same would be true in the scenario posited above. However, it would still be true that the Petitioner will have end run around the prejudice that the Casehandling Manual requires.

In addition, the instant petition is inconsistent with General Counsel Memoranda 16-02 and 17-02, which state in relevant part: “[u]pon docketing, each case is assigned a unique case number.” (emphasis added); *See also*, Operations Management Memorandum 03-77 (stating,

regarding inter-regional transfer of R cases, that: “the case will remain under a single case number throughout the entire process, eliminating unnecessary paperwork and confusion.”)(emphasis added); Casehandling Manual, Sec. 11714.2 (b) (same).

The instant case has been assigned not one (1) but two (2) case numbers simultaneously: 21-RC-261540 and 21-RC-262136.

Finally, the Intervenor disagrees with the suggestion in the Denial that the Intervenor’s contract bar argument in Case No. 21-RC-261540 prejudiced their right to argue that the instant petition was procedurally improper. Exercising the right to contest the untimely filing of a petition does not waive the Intervenor’s right to contest a second petition on different grounds. This could be no truer than in the instant case, where the bar argument had merit. After the Intervenor raised this argument the Petitioner withdrew its petition. Why would the Petitioner do this unless it thought that the argument had merit?

A contrary conclusion punishes the Intervenor for raising arguments based on long standing Board law and policy and is inconsistent with the Act. If the Board punishes a party for raising arguments based on the Board’s own policies, such arguments will not be made. By extension, those policies will not be enforced.

For all these reasons, without limitation, the Board must grant review of the Regional Director’s incorrect Denial and his incorrect DD&E.

### ***Conclusion***

The Board must grant review of the Regional Director’s incorrect Denial and his incorrect DD & E. The instant petition is procedurally improper because predicated on an improper withdrawal approval in Case No. 21-RC-261540 , it has had multiple case numbers, is based on reasoning that permits end runs around longstanding policies regarding prejudice that is supposed

to attach to petitions, and because the Denial improperly punishes the Intervenor for raising a contract bar argument. These are all issues that have not been squarely decided under extant Board law. So, they raise a substantial question of law.

All ballots to be cast in this matter must be impounded and remain unopened pending the Board's ruling and/or decision on this Request for Review.

It is also necessary that the Board stay all the Region's proceedings in this case, including the election. This is clearly necessary because the DD & E and Denial incorrectly decided matters inconsistent with longstanding Board policies central and indispensable to efficiently administering Board elections.

Respectfully Submitted,

/s/ Richard M. Olszewski

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Attorneys for the Intervenors

DATED: August 17, 2020, Detroit, Michigan

#### **Certificate of Service**

The undersigned has emailed the forgoing and attachments to the below persons. He has also e-filed these same documents with the Region and Board.

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/s/ Richard M. Olszewski

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DATED: August 17, 2020, Detroit, Michigan